ISAAC IYADURAI A/L NALLAPERUMAL & 26 ORS.

v.

VEDHA RATNAM S/O VALIAPPAN & ANOR.

HIGH COURT, SHAH ALAM
DATO' MAHADEV SHANKAR J.
[ORIGINATING SUMMONS NO. 24-300-1991]
30 JANUARY 1992

TRUSTS: First defendant purchaser of land - First defendant dividing land into sub-lots and selling the sub-lots - First defendant failing to obtain sub-division of land and transfer land to sub-purchasers - Sub-purchasers applying for declaration of trust.

The first defendant purchased a piece of land and caused it to be divided into twenty five sub-lots which he then sold to various sub-purchasers under common form sub-sale agreements. It was a term of the sub-sale agreements that the first defendant would transfer the title to the said land to his own name as trustee and would subsequently apply for sub-division of the said land in accordance with the plan.

The first defendant in fact got the land registered in his own name and the sub-purchasers applied for a declaration of trust and for consequential orders. The first defendant contended that the sub-purchase agreements were frustrated because his application for sub-division was rejected and sought to rescind the sub-purchase agreements.

Held:

[1] From the date of each sub-purchase agreement the first defendant became the trustee of each sub-lot for the sub-purchaser in question.

[2] The alleged frustration was self-induced as the first defendant's application for conversion and sub-division was not supported by the proper documentation.

[3] The first defendant had not explained or in any way sought to mitigate his misconduct in dealing with the trust property as though it was his own. A more blatant case of breach of trust would be hard to imagine.

[Plaintiffs application allowed. Consequential orders made].

For the plaintiffs - Ram Sing; M/s. Dusing & Co.
For the 1st defendant - Proctor; M/s. Y.S. Woo & Proctor

[**Ed. Note:** The defendants' appeal to the Supreme Court vide Supreme Court Civil Appeal No. 02-63-92 was dismissed with costs on 4 May 1993].

JUDGMENT

Mahadev Shankar J:

This is a claim for a declaration of trust with regard to land and for consequential orders.

Geran No. 19342 Lot 11056 in the Mukim of Klang (the said land) was originally registered in the name of one Periathamby Chettiar. He sold the said land to Ng Koon Leong and Go Pin but died before the land could be registered in their names. So Ng and Go applied to Court for a vesting order.

Whilst this application was pending, on 13 January 1975 Ng and Go entered into a written agreement to sell the said land to the first defendant for RM54,704.80. A 10% deposit was paid on execution of this agreement. Eight percent of the balance of the purchase price was to be paid by 10 February 1975 and thereupon the first defendant was to be allowed into possession. After obtaining the vesting order completion was to take place whereupon the final 10% was to be paid. This took place on or about 10 May 1976.

The said land is square. The first defendant had the land surveyed and divided into twenty-five sub-lots most of them measuring about 10,816 sq. ft. There were some larger lots ranging between about 11,000 sq. ft. to about 12,300 sq. ft. These twenty-five sub-lots were delineated on a scale plan (the said plan) which he then used as a basis for the sale of individual sub-lots to various sub-purchasers.

These sub-sale agreements are in common form and were prepared by the first defendant's solicitors. They were signed by the sub-purchasers on various dates commencing 28 February 1975. The purchase price for each sub-lot was paid in full. I consider it significant that clause 4 of the sub-purchase agreement provided that the sub-purchaser was entitled to occupy his portion with effect from 10 February 1975 or so soon thereafter as the first defendant obtained vacant possession. It is reasonable to infer from

this back-dating that the first defendant was using the moneys he collected from the sub-purchasers to pay up Ng and Go aforesaid.

The sub-purchase agreements makes it manifestly obvious that upon full payment of the purchase price each sub-purchaser was to be regarded as the beneficial owner of his sub-lot. By clause 5(a) of the sub-purchase agreement the first defendant undertook to obtain the transfer of the title to the said land, "to his own name as trustee as soon as possible and as soon as the title is in his own name as trustee to apply for sub-division" of the said land in accordance with the said plan.

This he did not do. He got the said land registered in his own name, on 10 May 1976. On 15 September 1976 he charged the said land for his own benefit to the Co-operative Central Bank Bhd. This was discharged on 29 May 1982. He then charged it again to K.L. Finance Bhd on the same day. He failed to service this loan and the land was put up for auction on 26 November 1983. Fortunately for the sub-purchasers this sale did not go through, and the charge was discharged on 18 May 1985.

Several sub-purchasers caveated the said land. They have now come to this Court for the relief aforesaid.

It is the opinion of this Court that from the date of each sub-purchase agreement the first defendant became the trustee of each sub-lot for the sub-purchasers in question. They had paid in full. The area they had brought was certain. They had no right to complain about any minor adjustments required for the issue of separate documents of title. It was even expressly provided that they were not entitled to rescind the agreement under any circumstances. They were to pay all outgoings including the proportionate sub-division charges and the costs incurred in the execution of the trusts. In the event of acquisition they were only entitled to their proportion of the compensation paid.

The sub-purchasers filed a Civil Suit in the K.L. High Court on 18 May 1985 for similar relief against the first defendant. After that suit was filed the first defendant made a haphazard application on 8 May 1986 for conversion and subdivision. That application was not supported by the proper documentation. It was consequently rejected on the 23 July 1988, by the relevant authority. The Civil Suit filed in the K.L. High Court has been withdrawn and the sub-purchasers are relying on these proceedings for the relief claimed.

The first defendant's defence is that the sub-purchase agreements have been frustrated because his application for sub-division was rejected. He therefore asserts that each of the sub-purchase agreements should be rescinded and he be allowed to refund them what they paid. But this alleged frustration is self-induced. He does not explain or in any way seek to mitigage his misconduct in dealing with the trust properly as though it was his own. I reject this defence.

A more blatant case of breach of trust would be hard to imagine. The first defendant must therefore make amends.

I now make the following orders:

(1) that the first defendant's name be deleted from the original and issue document of title to the said land by the Pentadbir Tanah Daerah in the Mukim of Klang or other relevant authority.

(2) that the first, fourth, fourteenth and twenty-second plaintiffs be appointed trustees of the said land and be registered on the original and issue document of title as such by way of a vesting order.

(3) that the first defendant do forthwith surrender the issue document of title to the said land to the plaintiffs' solicitors for onward transmission to the PTD Mukim Kelang together with a sealed copy of this order;

(4) that the first defendant do disclose full particulars of the person to whom sub-lot 21 was sold and supply the four plaintiff trustees with any further information required to complete their list of the beneficial owners of all 25 sub-lots comprised in the said property;

(5) that the caveats filed by the sub-purchasers against the said land be lifted if so required for the registrations to be affected to this order;

(6) that the plaintiff trustees hereby appointed be and are hereby given liberty to apply for any further directions with a view to recovering relief for breach of trust, and for giving each of the beneficiaries his due remedy;

(7) that the costs of these proceedings be taxed on a solicitor and client basis and be paid by the first defendant to the plaintiffs.